

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0805027568
	)	
DAVID L. WILLIAMS,	)	
	)	
Defendant.	)	

Submitted: February 25, 2010  
Decided: May 28, 2010

**On Defendant's *Pro Se* Motion for Postconviction Relief. DENIED.**

**ORDER**

Cynthia L. Faraone, Deputy Attorney General, Wilmington, Delaware 19801.  
Attorney for State of Delaware.

David L. Williams, James T. Vaughn Correctional Center, 1181 Paddock Road,  
Smyrna, Delaware 19977. *Pro se.*

**CARPENTER, J.**

On this 28<sup>th</sup> day of May 2010, upon consideration of Defendant's *Pro Se* Motion for Postconviction Relief, it appears to the Court that:

1. David Williams ("Defendant") has filed a *Pro Se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). For the reasons set forth below, the Defendant's *Pro Se* Motion for Postconviction Relief is **DENIED**.

2. On June 23, 2008, Defendant was indicted on the following counts: (1) Possession with Intent to Deliver a Narcotic Schedule I Controlled Substance; (2) Possession of a Controlled Substance Within 300 Feet of a Park, Recreation Area or Place of Worship; (3) Possession of a Controlled Substance Within 1000 Feet of a School; and (4) Loitering. Defendant filed a suppression motion on August 27, 2008, and the motion was heard and denied on October 10, 2008.

A stipulated bench trial<sup>1</sup> was held on October 23, 2008, and the Court found Defendant guilty as to Possession of a Controlled Substance Within 300 Feet of a Park, Recreation Area or Place of Worship and not guilty as to Loitering. The State filed a nolle prosequi on the charges of Possession with Intent to Deliver a Narcotic Schedule I Controlled Substance and Possession of a Controlled Substance Within 1000 Feet of a School. Defendant was sentenced on March 6, 2009 and an appeal

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<sup>1</sup> Defendant requested a stipulated bench trial in order to preserve his right to appeal the suppression hearing decision by the Superior Court.

was filed with the Supreme Court on March 18, 2009. Defendant's conviction was affirmed by the Supreme Court on October 9, 2009. Defendant then filed this *Pro Se* Motion for Postconviction Relief on December 11, 2009.

3. Defendant raises two grounds for relief before this Court: (1) illegal search and seizure and (2) ineffective assistance of counsel. Prior to addressing the merits of a postconviction relief claim, the Court must first determine whether the Motion meets the procedural requirements of Rule 61(i).<sup>2</sup> This section of Rule 61 sets forth procedural bars governing the proper filing of a motion for postconviction relief: (1) the motion must be filed within one year of the final judgment of conviction; (2) any ground for relief not raised in a prior post conviction motion will be barred if raised in the instant Motion; (3) any claims which the Defendant failed to assert in the proceedings leading to his conviction are barred, unless he is able to show cause for relief from the procedural default and prejudice from violation of the movant's rights; and (4) any ground for relief raised in this Motion must not have been formerly adjudicated in any proceeding leading to the conviction, unless the interest of justice requires reconsideration.<sup>3</sup>

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<sup>2</sup>See *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Maxion v. State*, 686 A.2d 148,150 (Del. 1996).

<sup>3</sup>*State v. Greer*, 2008 WL 1850625 (Del. Super. Mar. 4, 2008); see also Super. Ct. Crim. R. 61(i)(1)-(5).

4. After reviewing the Defendant’s Motion, Defendant’s illegal search and seizure claim is barred from relief under Rule 61(i)(4). Under this Rule, any ground for relief raised in the Defendant’s current motion must not have been formerly adjudicated in any proceeding leading to the conviction, unless the interest of justice requires reconsideration. Defendant’s illegal search and seizure claim has been previously addressed and decided upon by this Court<sup>4</sup> and was affirmed by the Delaware Supreme Court.<sup>5</sup> A defendant is not entitled to have a court reexamine a claim that has been previously adjudicated “simply because the claim is refined or restated.”<sup>6</sup>

Defendant’s Motion also does not meet the “interest of justice” exception of Rule 61(i)(4). This exception is narrow and is only invoked if the Defendant can show that “subsequent legal developments have revealed that the trial court lacked the authority to convict or punish [the movant].”<sup>7</sup> Defendant has not indicated any subsequent legal developments that would merit a review of this claim. As such, Defendant’s illegal search and seizure claim is dismissed.

5. Defendant’s ineffective assistance of counsel claim raises three issues: (1) counsel failed to familiarize and prepare Defendant’s defense at the suppression

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<sup>4</sup> Docket Item (“D.I.”) 13, 14.

<sup>5</sup> *Williams v. State*, 2009 WL 2959644 (Del. Supr. Sept. 16, 2009) (TABLE).

<sup>6</sup> *Collingwood v. State*, 2000 WL 1177630, at \*2 (Del. Supr. Aug. 11, 2000) (citing *Skinner v. State*, 607 A.2d 1170, 1172 (1992)).

<sup>7</sup> *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

hearing<sup>8</sup>; (2) counsel withheld favorable evidence at the suppression hearing and at trial<sup>9</sup>; and (3) counsel failed to establish sufficient facts at the suppression hearing to rebut the charges against the Defendant.<sup>10</sup>

6. The Court applies the two-part test of *Strickland v. Washington*<sup>11</sup> when evaluating a claim for ineffective assistance of counsel. Under *Strickland*, the defendant must first establish that counsel's performance fell below an objective standard of reasonableness, with reasonableness being judged under professional norms prevailing at the time counsel rendered assistance.<sup>12</sup> Second, the Defendant must then show there is a reasonable probability that the result of the proceedings would have been different in the absence of counsel's error.<sup>13</sup> If either prong of the *Strickland* test is not met, the defendant's claim fails.<sup>14</sup>

7. Defendant's first ineffective assistance of counsel claim argues that counsel failed to "adequately acquaint himself with the laws and statutes in defendant's case, and failed to conduct a thorough investigation of the facts surrounding the charge" in preparation of the suppression hearing.<sup>15</sup> Defendant seems

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<sup>8</sup> Def.'s Mot. at 1.

<sup>9</sup> Def.'s Mot. at 3.

<sup>10</sup> Def.'s Mot. at 8.

<sup>11</sup> 466 U.S. 668 (1984).

<sup>12</sup> *Id.* at 669.

<sup>13</sup> *Id.*

<sup>14</sup> *State v. Collins*, 2007 WL 2429373, at \*2 (Del. Super. Aug. 28, 2007).

<sup>15</sup> Def.'s Mot. at 1.

to be alleging that counsel failed to properly cite case law as part of Defendant's defense and that counsel failed to familiarize himself with Officer Sowden's affidavit, the video surveillance, and preliminary hearing statements which Defendant believes were favorable to his case.<sup>16</sup>

With regard to Defendant's claim that counsel failed to cite case law as part of Defendant's defense, the Court cannot find that Defendant established ineffective assistance of counsel. Although the Court agrees that it is important for attorneys to adequately prepare a defense in all stages of the process, the Court cannot find that Defendant has satisfied both *Strickland* prongs. This is because, even if the Court was to find counsel's representation fell below the objective standard of reasonableness, the Defendant has not cited any specific case law that counsel should have cited during the suppression hearing which would have changed the outcome of Defendant's case. As such, both prongs of *Strickland* are not met and this claim will be denied.

The Court also cannot find that *Strickland* is satisfied as to Defendant's allegation that counsel failed to review evidentiary materials in preparation of Defendant's case. Specifically, Defendant indicates that counsel failed to review the affidavit of probable cause, the video surveillance, and preliminary hearing

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<sup>16</sup> Def.'s Mot. at 1-2.

transcripts. However, it appears that the Defendant agrees that counsel provided him with a copy of the affidavit of probable cause during counsel's prison visit<sup>17</sup> and they reviewed the authenticity of the affidavit. This would reasonably indicate that after counsel and Defendant reviewed the affidavit together, they discussed the contents of the affidavit, which led to the decision to file a motion to suppress.<sup>18</sup> With regard to the video surveillance and hearing transcripts, counsel's affidavit denies Defendant's allegations and submits that counsel "reviewed all discovery including the tapes of the incident provided by the police officers."<sup>19</sup> In addition, the suppression hearing transcript also provides further support that the video surveillance was reviewed by counsel.<sup>20</sup> The Court is satisfied that counsel reviewed the evidentiary material prior to the suppression hearing and therefore cannot find that counsel's representation fell below the objective standard of reasonableness under the first *Strickland* prong. This claim is denied.

8. Defendant's second ineffective assistance of counsel claim alleges that "[c]ounsel withheld favorable evidence from being presented at the [s]uppression [h]earing and also at trial."<sup>21</sup> Defendant again contends that counsel failed to use the

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<sup>17</sup> Def.'s Mot. at 1.

<sup>18</sup> Def.'s Mot. at 2.

<sup>19</sup> Wilkinson Aff. 2.

<sup>20</sup> Trial Tr. 3, Oct. 10, 2008 ("Mr. Frawley: Your Honor, I apologize. I forgot to let the clerk know that there is a video in this case. I reviewed [the video] with Mr. Wilkinson...").

<sup>21</sup> *Strickland*, 466 U.S. at 669.

affidavit of probable cause in conjunction with the video surveillance to support the alleged illegal search and seizure and police misconduct.<sup>22</sup>

*Strickland* provides a strong presumption that “representation was professionally reasonable.”<sup>23</sup> Thus, the Court will not review actions of counsel through a lens of hindsight,<sup>24</sup> and if trial counsel investigated both the laws and facts and made reasonable strategic choices at the time of the trial, those choices are “virtually unchallengeable.”<sup>25</sup> As established above, the Court found that counsel did review the affidavit and video surveillance. Although counsel’s affidavit does not directly address why such evidence was not used as part of the Defendant’s defense, the Court is satisfied that the materials were reviewed and counsel made a conscious strategic decision not to use such evidence at the suppression hearing and trial. Because the Court is satisfied that trial counsel investigated both laws and facts, coupled with the strong presumption that representation was professionally reasonable, this Court cannot find that counsel was ineffective. Thus, this claim is denied.

9. Lastly, Defendant contends that counsel was ineffective for failing to rebut “erroneous information” used by the Court when evaluating the totality of the circumstances to justify Defendant’s detention.

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<sup>22</sup> *Id.*

<sup>23</sup> *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990) (citing *Albury v. State*, 551 A.2d 53, 58 (Del. 1988)).

<sup>24</sup> *Strickland*, 466 U.S. at 687.

<sup>25</sup> *Id.* at 690.

The Court finds this argument is without merit and is not a basis to support an ineffective assistance of counsel claim. Defendant does not assert which statements were erroneous and does not indicate how such statements, if corrected by counsel, would have changed the outcome of the suppression hearing. Both this Court and the Supreme Court have found there was sufficient evidence to establish that the Defendant was legally detained and that such detention was not a violation of Defendant's rights. The Defendant has not provided any basis to question the propriety of those decisions. Therefore, the Court cannot find the *Strickland* test has been satisfied and will deny this claim.

For the foregoing reasons, Defendant's *Pro Se* Motion for Postconviction Relief is DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.  
Judge William C. Carpenter, Jr.